




UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION IX  
75 Hawthorne Street  
San Francisco, CA 94105

**MEMORANDUM**

From: Steven Jawgiel (ORC-1)   
To: Ivry Johnson (PPA-2)  
Date: February 23, 2015  
Re: Conversion of Subpoena to FOIA Request  
[Trevino v. Cummins, Inc. et al.]

Hello Ivry,

Enclosed is a copy of the second subpoena Thomas Milvetic, Esq. issued on EPA. Pursuant to 40 C.F.R. §2.405, EPA is automatically converting this subpoena into a document request under the Freedom of Information Act (FOIA). Definitions and a list of requested documents can be found in the attached subpoena in Attachment 3. Apparently, Mr. Milvetic is amending his previous document request.

Ivry, I greatly appreciate your assistance. Feel free to contact me at 2-3876 with any questions.

Attachment

CASE NUMBER:  
**BC 462 323**

**United States Environmental Protection Agency**  
75 Hawthorne Street, San Francisco, CA 94103

TO (name of deposition office): US Legal Support Inc.  
ON (date)/ AT (time): 02/27/2015 9:00AM  
LOCATION: 20970 Warner Center Ln. Suite C. Woodland Hills. CA 91367

Do not release the requested records to the deposition officer prior to the date and time stated above.

- ☐ a. by delivering a true, legible and durable **copy** of business records described in item 3, enclosed in a sealed inner wrapper with the title and number of the action, name of witness, and date of subpoena clearly written on it. The inner wrapper shall then be enclosed in an outer envelope or wrapper, sealed, and mailed to the deposition officer at the address in item 1.
- ☐ b. by delivering a true, legible and durable **copy** of the business records described in item 3 to the deposition officer at the witness's address, on receipt of payment in cash or by check of the reasonable costs of preparing the copy, as determined under Evidence Code Section 1563(b).
- c. ☒ by making the **original** business records described in item 3 available for inspection at your business address by the attorney's representative and permitting **copying** at your business address under reasonable conditions during normal business hours.
2. *The records are to be produced by the date and time shown in item 1 (but not sooner than 20 days after the issuance of the deposition subpoena, or 15 days after service, whichever date is later). Reasonable costs of locating records, making them available or copying them, and postage, if any, are recoverable as set forth in Evidence Code section 1563(b). The records shall be accompanied by an affidavit of the custodian or other qualified witness pursuant to Evidence Code Section 1561.*
3. **The records to be produced are described as follows** (if electronically stored information is demanded, the form or forms in which each type of information is to be produced may be specified):

SEE ATTACHMENT 3.

☐ Continued on Attachment 3.

4. IF YOU HAVE BEEN SERVED WITH THIS SUBPOENA AS A CUSTODIAN OF CONSUMER OR EMPLOYEE RECORDS UNDER CODE OF CIVIL PROCEDURE SECTION 1985.3 OR 1985.6 AND A MOTION TO QUASH OR AN OBJECTION HAS BEEN SERVED ON YOU, A COURT ORDER OR AGREEMENT OF THE PARTIES, WITNESSES, AND CONSUMER OR EMPLOYEE AFFECTED MUST BE OBTAINED BEFORE YOU ARE REQUIRED TO PRODUCE CONSUMER OR EMPLOYEE RECORDS.

DISOBEDIENCE OF THIS SUBPOENA MAY BE PUNISHED AS CONTEMPT BY THIS COURT. YOU WILL ALSO BE LIABLE FOR THE SUM OF FIVE HUNDRED DOLLARS AND ALL DAMAGES RESULTING FROM YOUR FAILURE TO OBEY.

Date issued: 02/06/2015

Thomas J. Miletic, Esquire

(TYPE OR PRINT NAME)

**/S/ Thomas J. Miletic, Esquire**

(SIGNATURE OR PERSON ISSUING SUBPOENA)

ATTORNEY-AT-LAW

(TITLE)

(Proof of service on reverse)

Page 1 of 2

ATTACHMENT 3

Pursuant to California Code of Civil Procedure § 2020.010

**Definitions and Instructions**

1. The terms "you" and "your" refers to the responding entity, its agents, its employees, and anyone else acting on its behalf.

2. The following terms are acronyms for the respective government agencies:

Acronym	Means
CARB	California Air Resources Board, a division of the California Environmental Protection Agency
Cal EPA	California Environmental Protection Agency
EPA	United States Environmental Protection Agency
Cal OSHA	California Occupational Safety and Health Administration
OSHA	United States Occupational Safety and Health Administration

3. The term "Defendant(s)" refers to Cummins Inc., Capacity of Texas Inc., Cargotec Solutions LLC, Cummins Diesel Sales Corporation, and/or Pacific Crane Maintenance Services Inc.

4. The term "Cummins" means Cummins Inc., the diesel engine maker headquartered in Indiana.

5. The term "regarding" means referencing, discussing, citing, mentioning, referring to, identifying, or otherwise containing information relevant to or pertaining to the request or category.

6. The terms "and" as well as "or" shall be construed either disjunctively or conjunctively as necessary to bring within the scope of these requests any document or thing which might otherwise be construed to be outside their scope.

7. The term "Document(s)" is used in the broadest possible sense and refers, without limitation, to the originals (or any copies when originals are not available) and any non-identical copies (whether different from the originals or otherwise), of any Electronic Data (defined below), written, printed, typed, photo static, photographed, recorded, or otherwise reproduced communication or representation of every kind and description, and including, but not limited to, correspondence, notes, minutes, records, messages and internal memoranda, diaries, reports, compilations, studies, summaries, analysis, tables and tabulations, financial statements, working papers, tallies, maps, diagrams, charts, plans, pictures, e-mail, or any other computer-stored or computer-readable data, including data stored in any personal electronic device, computer printouts, teletype messages and other communications, all other data compilations from which information or communications can be obtained, and any preliminary versions, drafts, or revisions of any of the foregoing.

8. The term "Document" includes the file and folder tabs associated with each original and/or copy, all correspondence transmitting such document or explaining or commenting on its contents, and all other supporting papers.

9. "Electronic Data" or "Data" means all information maintained or capable of being maintained in electronic form, or readable by any Computer, including all non-identical copies of such information.

A. Electronic Data includes computer programs, in whole or in part, including all versions, revisions, modifications, updates, patches or customizations, programming notes or instructions, and any input to or output from any computer program or utility.

B. Electronic Data also includes all electronic communications including email, data stored on phones, pagers, or other electronic devices capable of sending, receiving, or storing communications or information related to communications; all information referencing or relating to such communications; word processing documents and all information stored in connection with such documents; electronic spreadsheets; databases including all records and fields, structural information, charts, graphs, and outlines; arrays of information; all other information used or produced by any software; operating systems; passwords; source code of all types; programming languages; linkers and compilers; peripheral drivers; PIF files; batch files; ASCII files; and any and all other files and or file fragments, regardless of the media on which they reside and regardless of whether they consist of or in an archive, Active file, Deleted file, or a file fragment.

C. Electronic Data includes all dynamic data associated with any Electronic Data including records of the creation date and time, creating user, and subsequent usage, modification, and/or deletion times and users. Electronic Data includes all information stored on computer memories, hard disks, floppy disks, CD-ROM's, DVD's, Bernoulli Box drives and their equivalents, magnetic tape, microfiche, punched cards, punched tape, computer chips, including EPROM's,

PROM's, RAM and ROM, or in any other media for digital optical storage or analog storage and/or transmission of information.

10. Documents in electronic magnetic media, including but not limited to electronic data such as email, must be produced in electronic form and printed out in hard copy form.

11. When you produce any Electronic Data, you must produce it in a form that maintains all meta-data or dynamic data associated with the Electronic Data. For example, when producing email communications do not move or alter the email in such a way as to eliminate or alter dynamic data such as the sender, recipient, time stamp, and/or IP path. When producing electronic files, do not recreate or move the files so as to eliminate the record of file creation date or any modification history associated with the file by the operating system. All Electronic Data must be produced in a manner whereby the meta data and dynamic data is maintained and available for review.

12. The term "UTR(s)" refers to a Utility Tractor Rig, which is an off-road mobile utility vehicle used to transport cargo containers at the Ports; also referred to as a yard truck, yard tractor, yard goat, yard hostler, yard hustler, prime mover, and/or specialized tractor-trailer.

13. The term "Aftertreatment Device" means any and all devices used to alter the composition or state of the diesel engine exhaust, whether directly or indirectly.

14. The term "Aftertreatment System" means the entire collection of Aftertreatment Devices installed on, or to be installed on, any vehicle or other internal combustion engine-powered machine.

15. The term "Aftertreatment Product" means any Aftertreatment Device or Aftertreatment System.
16. The term "DPM" refers to diesel particulate matter, commonly known as "soot," the non-gaseous solid and liquid particle component found in the exhaust of diesel-fueled compression-ignition engines.
17. The term "DPF(s)" refers to a Diesel Particulate Filter, which is an emission-control technology that reduces DPM emissions by trapping the particles in a flow filter substrate and periodically removes the collected particles by either physical action or by oxidizing (burning off) the particles in a process called regeneration. DPFs are Aftertreatment Devices.
18. The term "DPF System" means all components contained inside of the DPF housing (container) and all components attached to or directed at the housing, including the diesel oxidation catalyst ("DOC"), the sensors, any injection system for the injection of DEF or fuel into the DPF housing, and any fuel burner that directs a flame into the housing.
19. The term "DPF Filter" means specifically the filter (trap) component itself, such as a silicon carbide, ceramic, or sintered metal wall-flow filter, or a mesh particle trap.
20. The term "regeneration" means the combusting of the stored soot in the DPF Filter into gasses and lighter-weight grey ash.
21. The term "passive" refers to an Aftertreatment System that relies on the exhaust gas temperature to regenerate the DPF, without the aid of additional energy or energy sources.

22. The term "active" refers to an Aftertreatment System that relies on an addition of energy (e.g. flame) or energy source (e.g. fuel) as an external enabler in order to regenerate the DPF (e.g. an electrical heater, a flame heater, or fuel injection into heated devices, into heated chambers (e.g. the DPF intake space) or onto heated surfaces (e.g. the DOC surface).

23. The term "Retrofit" or "Retrofitted" means the installation on a machine, including a UTR vehicle, of an exhaust Aftertreatment System.

24. The term "warning(s)" means any method by which a cautionary message or cautionary language, including, but not limited to, cautions, warnings, admonitions, caveats, alerts, and recommendations, was communicated or conveyed, including, but not limited to, posting of signs, embossing, silk-screening, stamping, printing of literature, distribution of literature, affixation of labels, and graphic illustration.

25. The term "The Port" or "The Ports" means the Port of Los Angeles, California and the Port of Long Beach, California, collectively.

A. The term "POLB" means the Port Long Beach, California.

B. The term "POLA" means the Port of Los Angeles, California.

26. The lower-case term "terminals" means the physical terminals (docks) at the Port.

27. The capitalized term "Terminals" or "Marine Operating Terminals" or "Marine Terminal Operating Companies" or "Operating Companies" or "Stevedore Companies" shall have an identical meaning, to wit, the following Companies operating at physical terminals (docks) of the Ports of Los Angeles and Long Beach, California:



EAGLE MARINE SERVICES ,LTD. (American Presidents Line terminal)  
614 Terminal Way, Terminal Island, CA 90731

WEST BASIN CONTAINER TERMINAL LLC  
2050 John S Gibson Boulevard, San Pedro, CA 90731

CHINA SHIPPING NORTH AMERICA  
111 W. Ocean Blvd., Ste. 1700, Long Beach, CA 90802

PORTS AMERICA (YAN MING)  
2001 John S. Gibson Blvd., San Pedro, CA 90731

YUSEN TERMINALS INC. (YTI and NYK terminals)  
701 New Dock St., Terminal Island, CA 90731

HANJIN SHIPPING COMPANY, LTD.  
17785 Center Court Dr., Ste. 750, Cerritos, CA 90703

STEVEDORE SERVICES OF AMERICA  
1525 Pier F Ave., Long Beach, CA 90802

CALIFORNIA UNITED TERMINALS  
2525 Navy Way, Long Beach, CA 90802

APM TERMINALS PACIFIC, LTD. (MAERSK)  
2500 Navy Way, San Pedro (Terminal Island), CA 90731

COSCO CONTAINER LINES AMERICAS, INC.  
588 Harbor Scenic Way, 3rd Fl., Long Beach, CA 90802

EVERGREEN/SEASIDE TRANSPORTATION SERVICES, LLC  
389 Terminal Island Way, Terminal Island, CA 90731.

LONG BEACH CONTAINER TERMINALS  
1171 Pier F Ave., Long Beach, CA 90802

TRAPAC INC.  
920 W. Harry Bridges Blvd., Wilmington, CA 90744

PASHA STEVEDORING &TERMINALS L.P.  
802 S. Fries Ave., Wilmington, CA 90744

INTERNATIONAL TRANSPORTATION SERVICE, INC.  
1281 Pier G Way, Long Beach, CA 90802; and  
PO Box 22704, Long Beach, CA 90801

28. The terms "Relate to," "Related to," or "Relating to" mean mentioning or describing, containing, involving or in any ways concerning, pertaining or referring to, or resulting from, in whole or in part, directly or indirectly, the stated subject matter.

### **Documents Requested**

1. All documents relating to any inspection or investigation done by you at the Terminals at the Ports in response to complaints of exposure to diesel exhaust, emissions, and/or odor from 2007 to the present.

2. All documents relating to any inspection or investigation done by you at the Terminals at the Ports in response to complaints related to the operation of UTRs from 2007 to the present.

3. All documents relating to any inspection or investigation done by you at the Terminals at the Ports in response to complaints of exposure to diesel exhaust, emissions, and/or odor emanating from UTRs from 2007 to the present.

4. All documents relating to any inspection or investigation done by you at the Terminals at the Ports in response to complaints concerning a UTR's Aftertreatment Device, Aftertreatment System, Aftertreatment Product, DPF, DPF System, or DPF Filter, from 2007 to the present.

5. All documents relating to any inspection or investigation done by you at the Terminals at the Ports in response to complaints concerning a UTR's regeneration process, from 2007 to the present.

6. All documents relating to any inspection or investigation done by you at the Terminals at the Ports in response to complaints concerning any retrofitted UTRs, from 2007 to the present.

7. All documents relating to any inspection or investigation done by you, regardless of whether done in response to a complaint, at the Terminals at the Ports relating to diesel exhaust, emissions and/or odors emanating from UTRs from 2007 to the present.

8. All documents relating to any testing done by you of UTRs and/or any components of UTRs at the Terminals at the Ports from 2007 to the present.

9. All documents relating to any inspection done by you of UTRs and/or any components of UTRs at the Terminals at the Ports from 2007 to the present.

10. All documents prepared by you reflecting the chemical composition of diesel fumes, exhaust, or emissions from the UTRs at the Terminals at the Ports from 2007 to the present.

11. All documents prepared by you relating to the long and/or short term effects of exposure to diesel fumes, exhaust, or emissions from UTRs at the Terminals at the Ports from 2007 to the present.

12. All documents prepared by you relating to the long and short term effects of exposure to diesel fumes, exhaust, or emissions at the Terminals at the Ports from 2007 to the present.

13. All documents relating to any tests or studies performed by you of air quality, exhaust levels, emission levels, and/or pollution in the ambient air at the Terminals at the Ports *from 2000 to the present* (emphasis added for effect).

14. All documents evidencing complaints of exposure to exhaust or emissions at the Terminals at the Ports from 2007 to the present, including but not limited to formal

complaints, claim or incident reports, union reports, logs, medical forms or medical records, and insurance reports and forms.

**15.** All documents evidencing complaints of exposure to exhaust or emissions emanating from UTRs at the Terminals at the Ports from 2007 to the present, including but not limited to formal complaints, claim or incident reports, union reports, logs, medical forms or medical records, and insurance reports and forms.

**16.** All documents evidencing complaints relating to the UTR regeneration process from the Terminals at the Ports of Los Angeles and Long Beach from 2007 to the present, including but not limited to formal complaints, claim or incident reports, union reports, logs, medical forms or medical records, and insurance reports and forms.

**17.** All documents evidencing warnings, citations, fines, or sanctions issued to the Terminals at the Ports of Los Angeles and Long Beach as a result of incidents related to UTRs at said Terminals, from 2007 to the present.

**18.** All documents evidencing warnings, citations, fines, or sanctions issued to the Terminals at the Ports of Los Angeles and Long Beach as a result of incidents of exposure to exhaust or emissions at said Terminals, from 2007 to the present.

**19.** All documents evidencing warnings, citations, fines, or sanctions issued to the Terminals at the Ports of Los Angeles and Long Beach as a result of the levels or amounts of exhaust, emissions, or pollution present at said Terminals, from 2007 to the present.

**20.** All documents reflecting communications, including correspondence between you and any labor union representing Longshore workers at the Ports, relating to exhaust, emission, or DPM levels at The Ports from 2007 to the present.

**21.** All documents reflecting communications, including correspondence between you and any labor union representing Longshore workers at the Ports, relating to the risk of exposure to exhaust, emissions, or diesel particulate matter while operating UTRs at The Ports from 2007 to the present.

**22.** All documents reflecting communications, including correspondence between you and any labor union representing Longshore workers at the Ports, relating to UTRs from 2007 to the present.

**23.** All documents reflecting communications, including correspondence between you and any labor union representing Longshore workers at the Ports, relating to DPFs from 2007 to the present.

[END]

PLANTIFF/PETITIONER: Carlos Trevino; Donna Trevino; Alex Marinkovich; et al.

CASE NUMBER:  
BC 462 323

DEFENDANT/RESPONDENT: Cummins, Inc.; Cummins Diesel Sales Corporation; et al.

**PROOF OF SERVICE OF DEPOSITION SUBPOENA FOR  
PRODUCTION OF BUSINESS RECORDS**1. I served this *Deposition Subpoena for Production of Business Records* by personally delivering a copy to the person served as follows:

- a. Person served (name):
- b. Address where served: **United States Environmental Protection Agency, 75 Hawthorne Street  
San Francisco, CA 94109  
Phone: (415) 947-8000**
- c. Date of delivery :
- d. Time of delivery:
- a. (1) ☐ Witness fees were paid.  
Amount..... \$ \_\_\_\_\_
- (2) ☐ Copying fees were paid.  
Amount..... \$ \_\_\_\_\_
- f. Fee for service..... \$ \_\_\_\_\_

2. I received this subpoena for service on : (date)

3. Person serving:

- a. ☐ Not a registered California process server.
- b. ☐ California sheriff, marshal, or constable.
- c. ☐ Registered California process server.
- d. ☐ Employee or independent contractor of a registered California process server.
- e. ☐ Exempt from registration under Bus. & Prof. Code section 22350(b).
- f. ☒ Registered professional photocopier.
- g. ☐ Exempt from registration under Bus. & Prof. Code section 22451.
- h. Name, address, and telephone number, and if applicable, county of registration and number:

**US Legal Support Inc.  
20970 Warner Center Ln. Suite C  
Woodland Hills, CA 91367  
Phone: (818) 878-9227**

I **declare** under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date:

(For California sheriff or marshal use only)  
I **certify** that the foregoing is true and correct.

Date:

(SIGNATURE)

(SIGNATURE)

# US Legal Support Inc.

44 Montgomery Street, Suite 550

San Francisco, CA 94104-4602

Phone:(650) 873-9188 FAX: (650) 873-8081

WorkOrder#: 192453.004

CSR: Ashley Cadena

## DECLARATION OF CUSTODIAN OF RECORDS

RECORDS ON: Carlos Trevino; et al. v. Cummins, Inc.; et al. D.O.B.: S.S.N.: \_

LOCATION: United States Environmental Protection Agency

I being the duly authorized custodian of records and having the authority to certify the records, declare the following:

**1. DESCRIPTION OF RECORDS PRODUCED:** (Must select at least one)

☐ Medical ☐ Billing ☐ Radiological Images ☐ Radiological Reports ☐ Insurance ☐ Employment ☐ Payroll  
☐ Academic ☐ Dental ☐ Other \_\_\_\_\_

The records were prepared by the personnel of the business in the ordinary course of business at or near the time of the act, condition, or event.

**2. THE RECORDS INDICATED BELOW WERE REQUESTED BUT DO NOT EXIST:**

☐ Medical ☐ Billing ☐ WCAB Recs ☐ Insurance ☐ Physical Therapy ☐ Sign-in Sheets ☐ Employment  
☐ Pathology reports/materials ☐ Prescription/Pharmacy ☐ Photographs ☐ Videotapes ☐ Paramedic/Ambulance  
☐ Psychiatric ☐ Payroll ☐ Academic ☐ Radiological Images ☐ Radiological Reports  
☐ Billing records can be obtained from: \_\_\_\_\_  
☐ Other/Explanation \_\_\_\_\_

**3. IN WHAT MANNER WERE THE PRODUCED RECORDS PREPARED:** (Must select at least one)

☐ Data/Computer Generated ☐ Typed/Hand Written Notes ☐ Summary ☐ Radiological  
☐ Audio/Video ☐ Pathological ☐ Other \_\_\_\_\_

**4. CERTIFICATION OF RECORDS COPIED OR OBTAINED:** (Must select at least one)

☐ The produced records is a true copy of all the records described in the Deposition Subpoena,  
Subpoena Duces Tecum or Authorization.  
☐ Pursuant to Evidence Code Section 1560(e), the original records described in the Deposition  
Subpoena/Subpoena Duces Tecum was delivered to the Attorney or the Attorney's representative for copying at  
the witness' place of business.  
☐ The following records were omitted or could not be produced at this time for the following reason:  
\_\_\_\_\_

**5. CERTIFICATION OF NO RECORDS:** (Must select at least one)

☐ A thorough search of our files, carried out under my direction revealed no documents,  
records or other material called for in the Subpoena or Authorization searched by Name, SSN, DOB, etc.  
☐ Existing records not within the time limitation set forth in the request.  
☐ All records have been destroyed in accordance with our document retention policy which is \_\_\_\_\_ years.  
☐ The following information does not match what we have [ ] DOB [ ] SSN [ ] NAME [ ] Other \_\_\_\_\_  
☐ Additional information is needed such as: \_\_\_\_\_  
☐ Other explanation: \_\_\_\_\_

**Under penalty of perjury and under the laws of California, I the CUSTODIAN of RECORDS, declare that the foregoing is true and correct.**

Date: \_\_\_\_\_ City \_\_\_\_\_, California

Custodian  
→ Signature

Print name \_\_\_\_\_ Signed: \_\_\_\_\_

**(OFFICE USE ONLY) CERTIFICATION OF PROFESSIONAL PHOTOCOPIER**

I, the undersigned, declare that I made true copies of all the original records that were given to me by the Custodian of Records at the above named location. I declare under penalty of perjury that the foregoing is true and correct.

Executed on \_\_\_\_\_ At \_\_\_\_\_, California  
Print Name \_\_\_\_\_ Signed \_\_\_\_\_